* **HIGH COURT OF DELHI AT NEW DELHI**

+ Counter Claim No. 537/05 in CS (OS) No. 321/2002

Date of decision : October 1st 2007

Educomp Datamatics Pvt. Ltd. ..... PLAINTIFF
!

Through : Mr. Sushil Salwan, Advocate

Versus

$ Mrs. Shabnam .....DEFENDANT

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Through : Nemo.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not?

(3) Whether the judgment should be reported in the Digest ?

ARUNA SURESH, J.

1. Plaintiff Shabnam filed a suit bearing CS (OS) No. 321/02 for possession, recovery of arrears of rent, damages and mesne profits against defendant Mr. Shantanu Prakash, Director, Educomp Datamatics Ltd. in respect of premises bearing No. R-7, Hauz Khas, New Delhi (hereinafter referred to as suit premises).

2. After receipt of summons, defendant filed written

statement refuting the allegations of the plaintiff in the main suit and raised certain preliminary objections which are legal in nature. Defendant also filed its counter claim against the plaintiff but the plaintiff failed to file written statement to the counter claim. On 12.12.2005, suit of the plaintiff was dismissed in default and the plaintiff/defendant in the counter claim was proceeded ex parte on the same date. It is the counter claim of the defendant (hereinafter referred to as the plaintiff) which is under consideration before this Court.

3. Plaintiff in the counter claim has averred that it is a duly incorporated company and Mr. Shantanu Prakash, Director of the plaintiff company, is competent to sign, verify and file the counter claim. Brief facts of the counter claim are that defendant Shabnam let out her entire premises No. R-7, Hauz Khas, New Delhi for plaintiff company's office-cum-resident/guest house by way of lease agreement dated 18.12.2000. Plaintiff company carried out renovation in the premises including Barsati floor in consultation with Mr. G.M. Khan, representative of the defendant and with her consent who had given an understanding that she would get necessary permission from Municipal Corporation of Delhi. As per lease agreement dated

18.12.2000 a 45 days moratorium period was granted to plaintiff company for upgradation of the premises and the lease period was to commence with 1.2.2001. After certain deliberations, it was agreed that the plaintiff on completion of additional floor area on the Barsati floor shall be permitted to use the same for five years without any additional charge towards rent and therefore would be entitled to all refunds/adjustments. Plaintiff had been spending money towards repair, renovation, additions and alterations for the additional area under the bonafide belief the construction was carried out in accordance with the building bye laws and defendant would fulfil her obligations. Municipal Corporation of Delhi issued a notice under section 345-A of the Delhi Municipal Corporation Act to the plaintiff as the occupier of the property and one Mr. Avinash Gupta which contemplated that unauthorized construction was being carried out at the second floor without the sanction plan. Vide order dated 25.4.2001 under Section 345A of Municipal Corporation Act, the Deputy Commissioner, South Zone ordered the sealing of the entire premises which were accordingly sealed. Plaintiff was deprived from using the premises for the purposes for which it had taken the same on rent. The sealing of the premises was on account of defendant's act

of omission and commission which could have been avoided. Premises were sealed on 27.4.2001. In exercise of clause 13 of the agreement, plaintiff, vide communication dated 2.9.2001, called upon the defendant to take back the possession of the premises. Plaintiff has claimed the following amount from the defendant:-

(1)a sum of Rs. 6 lacs towards furniture and fitting security,

(2)rent of Rs. 3,30,000/- to be refunded,

(3)advance rent of Rs. 2,57,500/- to be refunded,

(4)refundable security deposit of Rs. 4,40,000/-.

(5) a sum of Rs. 13,48,523/- towards expenses incurred and amounts spent on additions, alterations, renovation on behalf of the defendant in the suit premises and Rs.5,00,000/- as damages. Plaintiff in all has claimed a sum of Rs. 34,76,023/-.

4. Plaintiff company in the counter claim led evidence by way of an affidavit of Sh. Shantanu Prakash, Managing Director of the company which is Ex. PW1/A. From this affidavit in

evidence it is proved that plaintiff is a duly incorporated company vide certificate of incorporation copy of which is Ex. PWCC-1/2 and Sh. Shantanu Prakash, the deponent, has been authorised by way of a Resolution dated 30.8.2006 to sign, verify and file the present suit on behalf of the plaintiff company.

5. Plaintiff and the defendant had entered into a lease agreement dated 18.12.2000 Ex.PWCC-1/3. As per clause 11 of the lease agreement, plaintiff paid security deposit of Rs. 4,40,000/- refundable at the time of expiry of lease agreement and after handing over vacant possession of the premises with all the fittings and fixtures to the lessor. As per clause 12 of the lease agreement plaintiff also paid advance of Rs. 3,30,000/- as is established from the receipt dated 15.12.2000 dated PWCC-1/8 equivalent to three months rent to be adjusted in 12 months by deducting every month an equal amount from the monthly rent. Premises were let out on a monthly rent of Rs.1,10,000/-. There is a moratorium period in clause 14 of the lease agreement by virtue of which time was granted to the plaintiff for doing upgradations before moving in and the rent was to begin from 1.2.2001. As per this agreement plaintiff paid a total sum of Rs. 7,70,000/- to the defendant

in terms of clauses 11 and 12 of the lease agreement. Therefore, it is proved that since after sealing of the premises by the MCD on 27.04.2001, plaintiff remained out of possession and finally plaintiff handed over the symbolic possession of the premises to the defendant vide communication dated 2.9.2001 Ex. PWCC1/6. Therefore, plaintiff has successfully established his claim of Rs. 7,70,000/-.

6. Plaintiff has claimed Rs. 6 lacs as security paid for furniture and fitting. However, neither from the lease agreement nor from evidence of the plaintiff or by way of any documentary evidence it is proved that plaintiff had paid a sum of Rs. 6 lacs as security for furniture and fitting. Plaintiff has not even explained as to how it was paid whether in cash or by way of a cheque and when this money was paid. Since lease agreement was reduced into writing, this amount would have found mention in the lease agreement if it was paid. It is specifically mentioned in the plaint that defendant did not provide any furniture when the premises were being renovated and some additions and alteration repairs were carried out on the second floor of the suit premises. Therefore, plaintiff has not been able to establish its claim for Rs. 6 lacs as security for furniture

and fitting. Hence it is not entitled to this amount.

7. Since plaintiff was in possession of the suit premises from the date of the execution of the lease till the premises were sealed by the MCD on 27.4.2001, it is liable to pay rent to the defendant for the said period. However, since there is a moratorium clause in the lease agreement and the rent was to begin from 1.2.2001, plaintiff is liable to pay rent for two months amounting to Rs. 2,20,000/-.

8. As per admission of the plaintiff itself in exercise of its right under clause 13 of the lease agreement it had sent communication dated 2.9.2001 Ex. PWCC1/6 to the defendant to take vacant possession of the property. It seems that defendant did not take symbolic/physical possession of the suit premises (as they were sealed by the MCD). Since plaintiff could not effectively use the premises after 27.4.2001 and the defendant failed to take any steps to get the premises desealed and the efforts of the plaintiff to get the premises desealed failed, plaintiff cannot be held liable to pay rent for the period commencing from 1.4.2001. But at the same time plaintiff cannot claim the refund of rent paid by it to the defendant for the period from 1.2.2001 to 31.3.2001 as it remained

in physical possession of the premises immaterial of the fact that it was carrying out additions, alterations or renovation in the suit premises during that period. By virtue of clause 14 of the lease agreement, it is liable to pay rent of the premises from 1.2.2001. Moratorium period was only for 45 days to carry out the renovation work. In case plaintiff continued the renovation work even thereafter, it cannot claim suspension of rent for the period till the premises was actually sealed by the MCD. Therefore, plaintiff is not entitled to refund of the entire rent paid by hit to the defendant. In all out of sum of Rs. 2,57,000/-, it is entitled to a sum of Rs.37,500/-.

9. Plaintiff has claimed Rs.13,48,523/- as expenses incurred by it for additions, alterations and renovation of suit premises. To prove its claim, it has placed on record and proved in evidence various invoices and bills Ex.PWCC1/4 (colly). Perusal of these bills/invoices indicates that plaintiff paid a sum of Rs. 5,69,310/- only against Bills 06/2001, 07/2001, 03/2001, 04/2001, 4245, 4247, 4264, 4253, 2129 and 183. Plaintiff has failed to prove in evidence that it had paid other bills/invoices 12/2001, 14/2001, 17/2001, 21/2001, 10/2001, 15/2001, 13/2001, 11/2001, 09/2001, 0022, 054, 055 and 1823. Plaintiff has

not examined any of the representatives/proprietors/ owners of the firms to show that they had supplied goods to the plaintiff in the said premises and they had received the payment against those bills/invoices. It was for the plaintiff to prove its own case which it has failed. It is pertinent to mention here that as per clause 15 of the lease agreement, lessor (defendant) had permitted the lessee (plaintiff) to make temporary additions to the property at the lessee's cost. However, the agreement is silent as to who had to bear the cost of the upgradation of the suit premises. If clause 14 & 15 are read together, then plaintiff is entitled to claim the money spent by it on the upgradation of the suit premises but not for temporary additions made in the property. Plaintiff has to bear the cost of temporary additions at its own end. Since the plaintiff has only established its claim for Rs. 5,69,310/- and as observed above, it can claim money spent on the upgradation of the suit premises. It is entitled to Rs. 5,69,310/- as proved in evidence.

10. Plaintiff has claimed damages amounting to Rs. 5 lacs. This claim of damages has been made on the plea that it had spent substantial amount to shift its office to the suit premises. Plaintiff was in the process of closing down office

at 1211, Padma Tower I, 5 Rajendra Place, New Delhi. However, again plaintiff has failed to prove in evidence that it incurred expenses amounting to Rs. 5 lacs or even more, as it was closing down its business at 1211, Padma Tower I, 5 Rajendra Place, New Delhi, with a view to shift its office cum residence to the suit premises. No statement of accounts to that effect has been placed on record to indicate the income of the plaintiff company prior to its entering into lease agreement with the defendant and the income incurred by it in the month of February and March, 2001 when it was preparing for shifting its business to prove that it suffered loss in the business due to the shifting process. Admittedly, the plaintiff had not shifted in the suit premises at all. In the absence of any corroborative evidence, bald statement of Sh. Shantanu Prakash that plaintiff suffered damages to the tune of Rs. 5 lacs is not sustainable. Therefore, in view of my discussion as above, plaintiff is not entitled to damages as claimed.

11. Hence, I hereby pass a decree for Rs. 13,76,810/- with proportionate cost in favour of plaintiff and against defendant. Plaintiff is also awarded interest @12 % per annum on the decretal amount from the date of the institution of the counter claim till realisation of the

decretal amount. Decree be prepared accordingly. File be consigned.

OCTOBER 1, 2007 **ARUNA SURESH, J**
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